

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 630 of 1996

in

SPECIAL CIVIL APPLICATION No 4565 of 1996

PARMESH PARIKH

Versus

VICE CHANCELLOR

Appearance:

MR YN OZA for Petitioners

MR NV Anjaria for Respondent.

SPECIAL CIVIL APPLICATION No 4435 of 1996

MATINMOHAMMAD S BAQUI

Versus

VICE CHANCELLOR

Appearance:

MR AD PADIVAL for Petitioners

MR NV ANJARIA for Respondent No. 1

MR JJ YAJNIK for Respondent No. 4

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and

MR.JUSTICE C.K.THAKKER

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CORAM : THE CHIEF JUSTICE G.D.KAMAT and

Date of decision: 08/07/96 & 09.07.96.

ORAL JUDGEMENT (Per G.D.Kamat C.J.)

These two matters are being disposed of under a common judgment as they relate to the same subject matter and even otherwise, we intend to do so, as the sole question to decide is whether a direction to MS University, Baroda to hold a fresh written test for Entrance Examination leading to MBA Course is justified.

To appreciate the question raised in these matters, it is necessary to refer to a few facts.

MS University, Baroda conducts a degree course in Master in Business Administration. It appears that there is a stiff competition for this course from the students with the result, an entrance examination is held by the University. It is not in dispute that a large number of students from all over the country appear in the examination. The Examination programme is announced well in advance and the candidates have to apply in special prescribed forms. It appears that the entrance examination consists of three parts - a written test followed by group discussion only for those who qualify at the written test and thereafter viva voce. Needless to say that viva voce is restricted to the students who qualify at both the earlier two stages. The course consists of two years.

For the course commencing for academic year 1996-97 Entrance Examination, first stage of the written test, was scheduled for 23rd June 1996. As per the announcement made and conditions incorporated in the examination rules the candidates were required to attend the centres of examination at Baroda 15 minutes before start of the test. The test was to commence on 23rd June 1996 at 8.45 A.M. onwards. This time, total number of candidates applied for appearing at this entrance examination was to the tune of 4052.

Special Civil Application No.4435 of 1996 is instituted not only on behalf of four candidates but seeks to represent 400 other candidates who missed the written test held on 23rd June 1996.

Letters Patent Appeal No. 630 of 1996 which is arising out of the order made in Spl.C.A.No.4565 of 1996 is instituted by 14 candidates again on a statement that

it is on behalf of 400 candidates who missed the said test.

The case of the petitioners in both the Special Civil Applications is that after complying with all necessary formalities and having found that written test would commence at about 8.45 a.m. on 23rd June 1996 a large number of examinees including the petitioners boarded "Karnavati Express" from Ahmedabad to Baroda leaving at 5.05 a.m. which ordinarily would take them to Baroda well in time between 6.40 and 6.50 a.m. They would get sufficient time before start of the written test but unfortunately once the Karnavati Express left Ahmedabad Railway Station, it came to a halt at the station called "Kaniy" which is 15 minutes running distance from Ahmedabad, where they came to know that as a result of derailment of some train at Mehmabad, there is no possibility of a Karnavati Express moving ahead. The result was that the students became panicky and tried to contact the authorities at University but in vain and in the meantime, they decided to approach Baroda by whatever means from the High way. According to the petitioners they proceeded in groups by road and for that matter used camel carts, trucks, tankers, with the result that they could reach the examination centres at Baroda any where between 8.45 and 9-00 a.m. It is further their case that the written test was conducted at four centres out of which three were situated in one Campus itself and last one was at a different place. For that matter, it is a grievance of the petitioners that all those candidates who were to appear for the written test at three examination centres were refused entry into the examination hall whereas 4th centre despite delay allowed the candidates to appear for the written test. The candidates who were not allowed to appear for the test on that day met University authorities but request for appearing in the test on that day fell on deaf ears. The representation for re-examination at some future date also did not meet with success with the result they are perforced to take up remedy before this court in the present petitions under Article 226 of the Constitution.

As mentioned earlier, four student-candidates filed Special Civil Application No.4565 of 1996. When the said Special Civil Application came up before the learned Single Judge, the same was rejected. The learned Single Judge held that there is no merit in the case of the petitioners therein for giving any direction to MS University to hold fresh written test merely because those students could not make onward journey to Baroda by train on that day. This order has given rise to Letters

Patent Appeal No.630 of 1996. During the pendency of this appeal for admission, a batch of four students-candidates instituted Special Civil Application No.4435 of 1996. Notice was directed to be issued to the respondents on 28th June 1996 making the same returnable on 3rd July 1996. In both these matters request was made that they be heard together and that too urgently. Since the matter is time bound and related to direction to MS University to hold fresh examination, if any on or before 10th July 1996 this court was perforced to give priority and accordingly by consent the matters are heard on merits and are accordingly being disposed of.

It has been contended on behalf of the petitioners that about 400 students-candidates missed this test as a result of derailment of a goods train at Mehemadabad; that no fault could be attributed to the petitioners and other students who missed the test and on the contrary they were reasonably prudent because they decided to catch early morning train leaving Ahmedabad at 5.05 a.m. so as to reach well in time at Baroda to appear at various centres for entrance test. It is also contended that apart from the fact that no fault lies at the door of the students, the action of the University in not acceding to their request by allowing them to appear for the written test despite being late, is not only illegal and bad in law but is also arbitrary, and even malafides have been attributed. In support, it is urged that for the fault of the Western Railway, there can be no victimisation and hence in any case a direction be given by this Court in the interest of the students to hold fresh test. In this connection it is pointed out that result of the entrance test is scheduled for 10th July 1996 and second stage of group discussion is scheduled by end of July 1996, which will be followed by viva voce sometime by 11th August 1996. This has been naturally pointed out to show that if a direction is given for holding fresh entrance test the University obviously cannot object as nothing will place the University out of its schedule.

Article 21 of the Constitution of India has been invoked on behalf of the petitioners saying that right to life would include right to livelihood. In that connection, it has been urged that inasmuch as students are keen in joining MBA course and if as a result of illegal action of the University they are to miss the test, the petitioners stand to loose a very valuable and precious one year of their life and in no case lost year can in any manner be restored and or be compensated. In

addition Art.14 also has been pressed into service, in that, it is pointed out that though not a single student was admitted at three centres situated within one Campus, the candidates who were late at the 4th centre were admitted for entrance test despite being late. Counsels for the petitioner, therefore, urged that even in the matter of students, travelling by the same train, which did not proceed beyond Kaniij, merely because some of them happened to be at the centre in one locality were treated unequally from a group of students admitted for test despite being late at the 4th center. This being discrimination must be held to infringe of Art.14 and hence even on that count it is necessary that direction should go to the University to hold a fresh entrance test.

The appeal and the petition are vehemently opposed on behalf of the University. For that matter, Shri M.M.Dadi, Dean of M.S.Patel Institute of Management Studies, has filed an affidavit on behalf of the respondent nos.1 and 2. On behalf of the railway also affidavit has been filed by Station Superintendent, Ahmedabad Railway Station. It is not necessary to set out the details from these affidavits nor in our view profuse reference is necessary and suffice to mention in the first instance that a statement has been made on behalf of the Western Railway authorities that Karnavati Express had left almost on time on that day. Though during the course of hearing one of the learned counsel appearing for the petitioners had made a statement at the bar that Karnavati Express had left Ahmedabad Station at 5.20 a.m. the same stands belied as we find a clear statement made by the petitioners themselves in the petition that Karnavati Express had left on 23rd June 1996 at 5.10 a.m. The affidavit otherwise indicates that the report of the derailment of the goods train at Mahemdabad was received by Ahmedabad Railway Station after Karnavati Express had left Ahmedabad Railway Station. It is, therefore, difficult to appreciate the contentions and the grievances made by the petitioners-students that despite the authorities at Ahmedabad having known about the accident/derailment at Mahemdabad they were not informed about the same before Karnavati Express left Ahmedabad Railway Station. On the contrary the fact that Karnavati Express was made to halt at Kaniij which is not more than 15 minutes running distance from Ahmedabad is telltale that there was no knowledge on the part of the authorities at Ahmedabad Railway Station of derailment before Karnavati Express left Ahmedabad Station.

We now come to the next stance taken by the petitioner when they claim that the petitions ought not to be restricted to 14 of them but the petitions being in representative character is on behalf of 400 students who were proposing to appear for entrance test at Baroda on that unfortunate day. In this connection, we find that there is a dispute in relation to number of students, who have missed entrance test as a result of aforementioned derailment. According to the Railway, in all 90 reserved seats and 196 unreserved tickets were sold. In our opinion it is inconceivable that 400 students could have travelled by Karnavati Express on that day. The affidavit filed on behalf of the respondent no.1 and 2 discloses that at the most 90 students-candidates might have missed entrance test as a result of derailment. But what however requires to be highlighted is a statement made by Dean that from Ahmedabad City itself 800 candidates appeared at the entrance test by reporting well in time on 23rd June 1996. This clearly suggests that the argument made on behalf of the petitioners that they were highly prudent and, therefore, took up early morning train seems to be misconceived. The fact that 800 candidates from Ahmedabad itself appeared for test suggests that all those 800 candidates have shown greater prudence on their part, having reached Baroda at least a day earlier. We have referred this aspect of the matter to indicate that the argument of the learned counsel for the petitioners in laying stress that petitioners were prudent in taking up Karnavati Express on the morning of the very day is misplaced.

There is, however, another aspect of the matter, which deserves consideration at the hands of this court and which has been very rightly highlighted by Shri Shelat, learned counsel for the respondent nos.1 and 2. In the affidavit, it has been mentioned that total number of candidates who had sought participation at the entrance examination was to the tune of 4052 but finally only 2990 appeared for written test held on 23.6.96, absentees being 1062. According to Dean, percentage of the absence was 26.21 %. He has given percentage of absenteeism for the last 3 years viz. 1993, 1994 and 1995 and a perusal of this percentage will show that there has been consistent percentage of absentees between 24.96% and 26.99 % during all these four years. What is, thereafter highlighted by Shri Shelat is that merit list of the candidates prepared finally for admitting students to MBA course is related to the performance at the entrance test, group discussion and viva voce and not on the basis of passing percentage. He urged that acceding to the request for fresh test may lead to discriminatory

treatment between the group of students who have already answered written test and a small group which is left out and who now seek fresh test because not only a new question paper will have to be set out but a new schedule has to be prepared and organised and while doing so entire academic schedule of the Institution will be disturbed at the costs of the students who are to be selected on their merits. This apart according to Shri Shelat, the University does not set the question papers and other material for other stages of entrance examination but an outside agency is engaged. He justifiably says that name of the agency cannot be disclosed and involving that agency once again to cater to some students is not at all justified.

There is one more aspect which, in our view, cannot be side tracked. There is a clamour for getting into this course from large number of students all over the country. It is not necessary to reiterate that graduates not only from the faculties of Arts, Science and Commerce, but even from Engineering opt for MBA course which is a highly job oriented degree. Again needless to say that availability of seats for this course in this country is too small to cater to a large number of students seeking admissions. In short, there is a scramble for seats in a stiff competition the reason why entrance test is envisaged and held for All India students. Viewed from this angle, it is not possible to hold that the decision taken by the University not to accede to the request of the petitioners and like of them, in our view, can in any manner be faulted with. The averment that some students though reached late were permitted to appear for the written test at one of the centre is again a disputed fact. The question really is whether they were at all late, as petitioners themselves said that they have divided themselves in groups who took different modes such as trucks, tankers and camel carts to reach Baroda.

In no event the University was responsible for derailment of the goods train at Mahemdabad and nothing is shown to term the action of the University to be arbitrary or irrational. We are, therefore, left with no option but to reject these two matters. We may mention that in one of the petitions, Indian Railways have been impleaded as party and for that matter, prayer for compensation has been made. We may make it clear that prayer for compensation was not pressed and in our view rightly so. The petitioners themselves say that accident was an act of God. In this view of the matter, nothing survives. LPA and Special Civil Application are

accordingly dismissed, but in the circumstances no order
as to costs.

(G.D.KAMAT C.J.)

(C.K.THAKKER J.)
